

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LASCELLES RATTRAY,

Plaintiff,

Case No. 07-C-0916

LIPPMANN-MILWAUKEE, INC.,

Defendant.

**DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S
AMENDED COMPLAINT**

Defendant, Lippmann-Milwaukee, Inc., by and through its attorneys, Cook & Franke S.C., pursuant to Federal Rules of Civil Procedure, Rules 12(b)(1) and 12(b)(6) and in accordance with Local Rule 6.04, hereby requests dismissal of plaintiff's amended complaint filed on April 30, 2008 on the following bases:

1. Plaintiff's amended complaint adds Title VII causes of action that are not related to or grow out of the Charge of Discrimination filed by plaintiff with the U.S. Equal Employment Opportunity Commission ("EEOC") as required for this action.

2. Count II of the amended complaint alleges Title VII hostile work environment. Plaintiff's previously filed EEOC charge upon which this Title VII action is based, does not allege facts supporting a hostile environment nor does it provide any facts suggesting that plaintiff was subjected to a hostile work environment.

3. Count III of the amended complaint alleges Title VII retaliation. Plaintiff's previously filed EEOC charge upon which this Title VII action is based, does not provide any allegations or factual support relating to the allegations of retaliation as alleged in the amended complaint.

4. As the hostile work environment and retaliation claims do not relate to the predicate EEOC charge as required by Title VII, plaintiff has failed to exhaust his administrative remedies. As a matter of law, the EEOC charge filed by plaintiff is not a proper basis for the Title VII allegations contained in plaintiff's amended complaint and plaintiff has failed to exhaust his administrative remedies as to these claims.

The facts, arguments and authorities in support of this Motion are fully set forth in Defendant's Memorandum in Support of Defendant's Motion to Dismiss Plaintiff's Amended Complaint and the Affidavit of Ann Barry Hanneman in Support of Defendant's Motion to Dismiss, which is incorporated by reference. Based upon the above, defendant, Lippmann-Milwaukee, respectfully requests the Court dismiss plaintiff's amended complaint based upon the failure of plaintiff's pleading to state a claim upon which relief may be granted.

Dated: this 20th day of May 2008.

s/ Ann Barry Hanneman
Attorneys for Defendant
Lippmann-Milwaukee, Inc.
Ann Barry Hanneman
S.B.W: #1008899
COOK & FRANKE S.C.
660 East Mason Street
Milwaukee, WI 53202
Phone: (414) 271-5900
Fax: (414) 271-2002
Email: abarry@cf-law.com